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MARK DILLON, TERESA NOA, MELVIN PONCE,
SONIA PURDY, JUSTIN FUKUMOTO,
ALFREDDA WAIOLAMA, and JACQUELINE RIO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,) CIVIL NO. CV03-00385 SOM-LEK
Plaintiff,) (Copyright)
v.
HAWAIIAN EXPRESS SERVICE,) DEFENDANTS MARK DILLON, TERESA
INC., a California) NOA, MELVIN PONCE, SONIA
corporation; H.E.S.) PURDY, JUSTIN FUKUMOTO,
TRANSPORTATION SERVICES, INC.,) ALFREDDA WAIOLAMA, AND
a California corporation;) JACQUELINE RIO'S MEMORANDUM IN
CALIFORNIA PACIFIC) RESPONSE TO PLAINTIFF WAYNE
CONSOLIDATORS, INC., a) BERRY'S MOTION IN LIMINE TO
California corporation;) EXCLUDE EVIDENCE OF MR.
JEFFREY P. GRAHAM and PETER) BERRY'S ALLEGED VENDETTA
SCHAUL, California citizens;)
MARK DILLON and TERESA NOA,) Hearing:
BRIAN CHRISTENSEN, Hawaii) Date: January 20, 2006
citizens; FLEMING COMPANIES,) Time: 2:00 p.m.
INC., an Oklahoma corporation;) Judge: Hon. Susan Oki
C & S LOGISTICS OF HAWAII,) Mollway
LLC, a Delaware LLC; C & S)
WHOLESALE GROCERS, INC., a)
Vermont corporation; C & S) [caption continued on next
ACQUISITIONS, LLC; FOODLAND) page]
SUPER MARKET, LIMITED, a)
Hawaii corporation; HAWAII)

TRANSFER COMPANY, LIMITED, a)
Hawaii corporation; RICHARD)
COHEN, New Hampshire citizen;)
ES3, LLC, a Delaware Limited)
Liability Company, MELVIN)
PONCE, SONIA PURDY, JUSTIN)
FUKUMOTO, ALFREDDA WAIOLAMA,)
JACQUELINE RIO, Hawaii)
citizens; JESSIE GONSALVES,)
LUIZ RODRIGUES, AL PEREZ and)
PATRICK HIRAYAMA, California)
citizens; GUIDANCE SOFTWARE,)
LLC, a California LLC; MICHAEL)
GURZI, a California citizen;)
ALIX PARTNERS, LLC, a Delaware)
LLC; DOE INDIVIDUALS 2-350;)
DOE PARTNERSHIPS, CORPORATIONS)
and OTHER DOE ENTITIES 2-20,) Trial: January 24, 2006
)
Defendants.)

)

**DEFENDANTS MARK DILLON, TERESA NOA, MELVIN PONCE, SONIA PURDY,
JUSTIN FUKUMOTO, ALFREDDA WAIOLAMA, AND JACQUELINE RIO'S
MEMORANDUM IN RESPONSE TO PLAINTIFF WAYNE BERRY'S MOTION IN
LIMINE TO EXCLUDE EVIDENCE OF MR. BERRY'S ALLEGED VENDETTA**

Defendants Mark Dillon, Teresa Noa, Melvin Ponce, Sonia Purdy, Justin Fukumoto, Alfreda Waiolama, and Jacqueline Rio ("Employees"), by and through their attorneys, Lyle S. Hosoda & Associates, LLC, hereby responds to Plaintiff Wayne Berry's Motion in Limine to Exclude Evidence of Mr. Berry's Alleged Vendetta as follows:

The instant motion is but a veiled attempt by Berry to have the jury reconsider the Court's summary judgment ruling which limited infringement in this case to the time period of April 1, 2003 to June 9, 2003 and held that any such infringement was inadvertent and innocent. While the Employees agree that

evidence of Mr. Berry's vendetta against Fleming should not be considered by the jury in this case, to the extent that Mr. Berry seeks to exclude such evidence in order to preclude the Defendants from submitting any evidence concerning the Court's summary judgment finding of non-willful infringement, the Employees object. There is no connection between the Court's summary judgment ruling on infringement and Mr. Berry's vendetta. Berry's motion for reconsideration of all parts of the Court's June 27, 2003 Order was denied. The Court's rulings stand, and there is no reason to exclude them from the evidence in this case.

DATED: Honolulu, Hawaii, January 10, 2006.

/s/ Lyle S. Hosoda
LYLE S. HOSODA
RAINIA P.B. MEAD
CHRISTOPHER T. CHUN

Attorneys for Defendants
MARK DILLON, TERESA NOA, MELVIN
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